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Attorneys for Defendant and Counterclaimant

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited
liability company,

Plaintiff,

vs.

AMERICAN FOOD STORES, LLC, a
California limited liability company,

Defendant.

AMERICAN FOOD STORES, LLC, a
California limited liability company,

Counterclaimant,

vs.

RECUPEROS, LLC, an Idaho limited
liability company,

Counterdefendant.

Civil No. 04-229-S-BLW

**MEMORANDUM OPPOSING
MOTION TO INTERVENE**

Defendant American Food Stores, LLC, (hereinafter called "AFS" in this document) opposes the motion by Tej Pahwa to intervene in this action on the grounds that there is no allegation that AFS will not adequately protect its interests against

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Recuperos, that Pahwa has alleged no obligation on the part of Recuperos to Pahwa, that Pahwa's complaint asserts only a claim against AFS which involves no common issues with the claims between Recuperos and AFS, and that no economies of litigation or other practical benefits justify allowing Pahwa to intervene in this case.

In advancing these arguments, AFS incorporates by reference the memorandum in opposition to motion to intervene filed on September 21, 2004, by Recuperos. AFS does not, in this memorandum, intend to repeat the arguments of Recuperos. However, the following observations are probably appropriate.

AFS' first point is that Pahwa has nowhere asserted its inability to protect its interests in this litigation. For that reason, there would appear to be no reason to allow Pahwa to intervene unless he asserts some independent rights against Recuperos.

That leads to AFS' second point, which is the fact that Pahwa's pleadings make reference to no independent claim against Recuperos. Thus, it appears that Pahwa's sole contribution to the issues between Recuperos and AFS will be to second or supplement AFS' own claims. That is an insufficient basis for permitting Pahwa to intervene.

Recuperos' argument in opposing the motion that its mere observation of the resolution of the dispute between AFS and Pahwa would add to its costs and expenses is certainly accurate. And, inasmuch as Recuperos asserts a right to attorney fees from AFS in this action, Pahwa's intervention can only increase the exposure of AFS for the attorney fees claimed by Recuperos if the intervention is permitted. Pahwa has advanced no reason whatsoever for subjecting AFS to that risk.

AFS' third point follows from the second. Because Pahwa has no claim against Recuperos, the issues that he wishes to assert against AFS are wholly unrelated to the issues between Recuperos and AFS. There is, so far as AFS can determine, absolutely no overlap between the matters raised in the complaint, answer and counterclaim on one side and those raised in the complaint in intervention on the other. The apparent justification for the complaint in intervention is the implicit claim that AFS might not repay any money that it owes to Pahwa.

Pahwa, however, has means other than intervening into this lawsuit to protect against that possibility. He could, for example, file a claim in the California state courts and obtain an agreement or order that any funds recovered in this action will be held in trust or escrow pending the resolution of that second lawsuit.

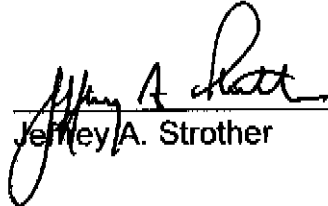
That is surely a preferable means for resolving Pahwa's claims, if only because Pahwa has asserted a claim for attorney fees in his proposed complaint. Just as Recuperos' fees will be higher if the intervention is allowed, Pahwa's fees will be higher if he participates in the resolution of the claims between Recuperos and AFS as a party to the action. And, just as there is no reason to subject AFS to the risk of additional fees on the part of Recuperos, there is likewise no reason to subject it to the risk of unnecessary fees incurred on Pahwa's behalf.

AFS' final point follows from the preceding three. In the absence of any allegation that AFS will not vigorously represent its own interests, in the absence of any claim by Pahwa against Recuperos and in the absence of any identity of issues between the claims involving Recuperos and AFS and those involving Pahwa and AFS,

there is no reason to grant the motion to intervene. In view of the foregoing circumstances, there can be no judicial economies resulting from the intervention. To the contrary, all that the intervention would accomplish is to increase AFS' exposure for attorney fees to both Recuperos and Pahwa. From AFS' perspective, that is reason enough to deny the motion. But, when that result is combined with the fact that Pahwa can assert no legally sufficient reason for intervention, the reasons why the court should deny the motion become overwhelming. AFS requests the court to rule accordingly.

DATED this 20th day of October, 2004.

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Jeffrey A. Strother

CERTIFICATE OF SERVICE

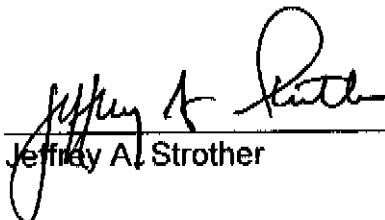
I HEREBY CERTIFY that on the 20th day of October, 2004, I caused a true and correct copy of the foregoing document to be served upon the following individual(s) by the method indicated below and addressed as follows:

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